

**GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU**

NEPR

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IN RE: IMPLEMENTATION OF THE
PUERTO RICO ELECTRIC POWER
AUTHORITY INTEGRATED RESOURCE
PLAN AND MODIFIED ACTION PLAN

CASE NO.: NEPR-MI-2020-0012

URGENT MOTION TO REQUEST CONFIDENTIAL ACCESS
TO EXHIBIT A OF JULY 22 MOTION

TO THE HONORABLE ENERGY BUREAU:

COMES NOW, Pattern Puerto Rico Holdings LLC (“Pattern”) through undersigned counsel, and very respectfully states and prays:

I. INTRODUCTION

On June 12, 2025, the Puerto Rico Energy Bureau issued a Resolution and Order (the “June 12 R&O”) directing the Puerto Rico Electric Power Authority (“PREPA”) to submit detailed information regarding amendment requests from Tranche 1 and legacy renewable energy project developers, including: (1) a status table summarizing such requests; (2) copies of the requests themselves; (3) correspondence with LUMA Energy (“LUMA”) regarding those requests; and (4) related draft documents. As noted in the June 12 R&O, [REDACTED]

[REDACTED]

[REDACTED]

On June 17, 2025, PREPA submitted certain materials in compliance with the June 12 R&O, including a request from Pattern [REDACTED]

[REDACTED]. [REDACTED]
[REDACTED]

On June 30, 2025, the Bureau issued a further Resolution and Order (the “June 30 R&O”) instructing PREPA to continue negotiations with Pattern [REDACTED]

[REDACTED]
[REDACTED]

In order to comply with the June 30 R&O, PREPA requested technical and economic input from LUMA. On July 14, 2025, PREPA received [REDACTED]

[REDACTED]
[REDACTED]

On July 22, 2025, PREPA filed its *Motion in Compliance with the Resolution and Order Dated June 30, 2025* (the “July 22 Motion”). In the July 22 Motion, PREPA explicitly relied upon LUMA’s technical, economic, and operational evaluation, [REDACTED]

[REDACTED]. PREPA simultaneously requested confidential treatment for Exhibit A under Article 4(iv) of Act No. 122 of August 1, 2019, known as the Puerto Rico Open Government Data Act (3 L.P.R.A. § 9893 et seq.), Section 6.15 of Act No. 57 of May 17, 2014, known as the “Puerto Rico Energy Transformation and Relief Act” (22 LPRA § 1054n), and the Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009 issued on August 31, 2016, as amended by the Resolution dated September 16, 2016 (“Policy on Management of Confidential Information”).

Thereafter, Pattern promptly requested a copy of Exhibit A from PREPA. PREPA refused, asserting that LUMA had designated the document confidential and directing Pattern to request it from LUMA. See **Annex 1**. LUMA, in turn, cited that disclosure required authorization from PREPA and/or the Bureau. See **Annex 2**.

On August 1, 2025, the Energy Bureau issued a Resolution and Order in which it ordered PREPA to “continue its negotiation process with Pattern” and complete the same in a manner that allows any agreement to be submitted to the Energy Bureau no later than August 10, 2025. PREPA was also ordered to submit, among others, “all relevant information exchanges between PREPA, LUMA and Pattern during the negotiation process.”

Pattern is ready, willing and able to continue its negotiations with PREPA regarding [REDACTED]. However, to this date, the discussions with PREPA have been plagued by denials which are based on justifications provided by LUMA to which Pattern has no access. Despite Pattern’s requests, LUMA’s analysis has not been produced. The result is a stalemate: PREPA points to LUMA, LUMA points to PREPA, and Pattern, the directly impacted party, remains without access to the very analysis PREPA uses to base its decisions.

To facilitate further negotiations with PREPA, Pattern therefore respectfully requests that the Bureau grant Pattern access to Exhibit A of the July 22 Motion under the terms of a Non-Disclosure Agreement (“NDA”), as allowed under Act 57-2014 and the Bureau’s Policy on Management of Confidential Information.

A is the principal basis for its evaluation of Pattern's proposal. Without this document, Pattern cannot meaningfully engage in the "continuing negotiations" that the Bureau has ordered. Exhibit A is relevant information exchanged between PREPA and LUMA during negotiations and is precisely the type of material the Bureau's orders compel.

The Bureau's orders are not aspirational. They are binding. PREPA's refusal to disclose Exhibit A, while simultaneously using it as its basis to evaluate Pattern's proposal, undermines the Bureau's authority, obstructs compliance with its orders, and deprives Pattern of the fair process the Bureau has mandated.

B. Express Authority for Confidential Access via Act 57-2014

The foundational provision on the management of confidential information filed before this Energy Bureau is Section 6.15 of Act No. 57 of May 17, 2014, known as the "Puerto Rico Energy Transformation and Relief Act" (22 LPRA § 1054n). Section 6.15 of Act 57-2014, as amended, provides:

If a person having the obligation to submit information to the Energy [Bureau] understands the information to be submitted is privileged or confidential, [such person] may request said [Bureau] to give [privileged or confidential] treatment subject to the following:

(a) if the Energy [Bureau], after due evaluation, understands the information should be protected, ***it shall find a way to grant this protection in the manner that impacts less the public, transparency and the rights of the parties involved in the administrative proceeding under which the alleged confidential document is being filed.***

(b) To such effects, ***the Energy [Bureau] may grant access to the document, or to portions of the document that are privileged, only to counsel and external consultants involved in the administrative proceeding after execution of a confidentiality agreement.*** (Emphasis provided.)

Section 6.15 of Act 57-2014 not only permits access to privileged information; it codifies a specific procedural mechanism for resolving disputes like this one – it expressly authorizes the Bureau to grant access to confidential information to counsel and experts of parties in the proceeding, provided they execute a confidentiality agreement.

Pattern does not seek public disclosure of the requested information, only counsel-and-expert review under the execution of a confidentiality agreement, the narrowest form of access expressly contemplated by Act 57-2014. Such access is also allowed by the Bureau's Policy on Management of Confidential Information whereby parties must submit signed Non-Disclosure Agreements in order to access information the Bureau has designated as confidential.

C. Bhatia Gautier v. Gobernador — Privilege Is Qualified, and the Burden Is on the Government

PREPA's legal basis for withholding access to Exhibit A is based on the assertion that it contains "evaluation related content that form part of the ongoing decision-making process" making it "protected under the deliberative process privilege until the evaluation process is concluded", citing *Bhatia Gautier v. Gobernador*, 199 D.P.R. 59 (2017) on numerous occasions throughout the July 22 Motion.

In *Bhatia Gautier*, the Puerto Rico Supreme Court held that while the government may invoke certain privileges to withhold information, those privileges are qualified, not absolute, and subject to a balancing test. *Id.* at page 84 citing Ernesto L. Chiesa Aponte, *Tratado de Derecho Probatorio* at 292, Dominican Republic, Ed. Corripio (1998). The Court clarifies: "a citizen's right of access to information on government affairs justifies placing a serious burden on the government to persuade when it claims a privilege for

official information.” *Id.* citing Chiesa Aponte, *Tratado de Derecho Probatorio, supra*, at 295. “Thus, when evaluating a claim of privilege, judges must weigh on the one hand, the government’s need to keep certain sensitive information confidential and the injury the government may cite, and, on the other, the needs of the party requesting the information and their right to obtain it”. *Id.*, citing Ernesto L. Chiesa Aponte, *Reglas de Evidencia Comentadas* at 164, San Juan, Eds. Situm (2016).

Moreover, Court also emphasizes that when asserting a claim of privilege, the burden of proof rests squarely on the government. *Id.* at 83. As such, the State cannot make a generalized claim of privilege. *Id.* at 85.

Crucially, “[t]o avail itself from the deliberative process privilege, the State must comply with the following: (1) the head of the agency with control over the information must make a formal claim after careful consideration, (2) an agency official must provide the precise reasons for asserting the confidentiality of the information or documents, and (3) the government must identify and describe the information or documents it wishes to protect.” *Id.* at 88, citing Moore’s Federal Practice, Sec. 26-412.10(1) (3ra ed. 2016). It is Pattern’s position that PREPA has not complied with these criteria and is not in a position to assert the deliberative process privilege.

Moreover, *Bhatia Gautier* expressly limits the deliberative process privilege to genuinely deliberative materials and excludes factual or objective content. As asserted by the Court in *Bhatia Gautier*: “this privilege does not extend to factual... [n]or does it protect objective materials.” *Id.* at 88. Exhibit A, by PREPA’s own description, consists of LUMA’s technical and economic evaluation — factual and objective in nature — which falls outside the privilege’s protection. Even if some portions of Exhibit A were deliberative, the

qualified nature of the privilege means it yields when, as here, the requesting party's need to examine the evidence used against it outweighs speculative confidentiality concerns.

Furthermore, even where applicable, the privilege is qualified and may be overridden by a particularized need. The Court writes: "this privilege may yield when it has been thoroughly shown that the particular need to obtain the information overrides the reasons for non-disclosure." *Id.* at 89. Pattern's need is direct and compelling: PREPA has used Exhibit A to justify its evaluation of Pattern's proposal, yet Pattern cannot review or rebut that analysis.

Lastly, the Court acknowledged alternatives to total withholding, including "limited access to the confidential file" *Id.* at 86–87. Pattern seeks only confidential, party-limited access under appropriate protective measures — as *Bhatia Gautier* and Act 57-2014 contemplate.

D. Puerto Rico Open Government Data Act (Act 122-2019)

PREPA also bases its request for confidential treatment on Article 4 of Act 122-2019. This Act establishes as a public policy the effective management and disclosure of public data to promote transparency, accountability, and informed decision-making. "Public data" includes information generated in the course of administering public affairs or exercising public authority — which encompasses LUMA's evaluation of Pattern's project.

Article 4(iv) of Act 122-2019, 3 L.P.R.A. § 9894, generally exempts certain official information, such as deliberative materials, from public disclosure, but is qualified by the phrase "as recognized by case law" and does not prohibit disclosure to directly affected

parties under confidentiality protections. Section 4's public policy mandate, when read in harmony with *Bhatia Gautier*, supports confidential disclosure under a protective order — not wholesale withholding. PREPA's position is therefore inconsistent with both the statutory framework and binding case law.

In conclusion, by withholding the document, PREPA prevents Pattern from evaluating, contextualizing, or rebutting the findings that directly determine its projects' future. This creates a clear procedural imbalance: PREPA is allowed to rely on evidence it refuses to share, leaving Pattern to contest a case it cannot fully see. Such an approach not only impairs Pattern's due process rights but also hampers the Bureau's ability to ensure an informed, fair, and transparent decision-making process.

WHEREFORE, Pattern respectfully requests that the Bureau order PREPA to produce Exhibit A to Pattern subject to a confidentiality agreement and protective order approved by the Bureau and Grant such other and further relief as the Bureau deems just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 5th day of August 2025.

We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using the electronic filing system and that we will send an electronic copy of this document to PREPA through its counsel of record at arivera@gmlex.net, and to LUMA Energy, LLC through its counsels of record at margarita.mercado@us.dlapiper.com, laura.rozas@dlapiper.com,

yahaira.delarosa@us.dlapiper.com, and to Genera PR, LLC through its counsels of record at jfr@sbqblaw.com.

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ANNEX 1

ANNEX 2

